

PUBLIC CHAPTER NO. 1063

SENATE BILL NO. 2609

By Black, Marrero, Ford, Burks, Berke

Substituted for: House Bill No. 2471

By Sherry Jones, Odom, Maggart, Hardaway, Cooper, Camper

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 10, relative to special education services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the Special Education Isolation and Restraint Modernization and Positive Behavioral Supports Act.

SECTION 2. The purposes of this act are:

(1) To ensure that every student receiving special education services is free from the unreasonable, unsafe and unwarranted uses of isolation and restraint practices;

(2) To encourage the use of positive behavioral interventions and support methods in schools;

(3) To develop properly trained staff in order to promote positive behavioral supports that reduce dependence on isolation and restraint practices; and

(4) To ensure that teachers of students receiving special education services are properly trained to protect the student, teacher and others from physical harm, if isolation or restraint is necessary.

SECTION 3. For the purposes of this act, unless the context otherwise requires:

(1) "Chemical restraint" means a medication that is prescribed to restrict a student's freedom of movement for the control of extreme violent physical behavior. Chemical restraints are medications used in addition to, or in replacement of, a student's regular drug regimen to control extreme violent physical behavior. The medications that comprise the student's regular medical regimen (including PRN medications) are not considered chemical restraints, even if their purpose is to treat ongoing behavioral symptoms;

(2) "Noxious substance" means the use of any defense spray or substance as defined by departmental rule;

(3) "Isolation" or "seclusion" means the confinement of a student alone in a room or an area where the student is physically prevented from leaving. This definition is not limited to instances in which a student is confined by a locked or closed door. Isolation does not include time-out, a behavior management procedure in which the opportunity for positive reinforcement is withheld, contingent upon the demonstration of undesired behavior. Time-out may involve the voluntary separation of an individual student from others;

(4) "Mechanical restraint" means the application of a mechanical device, material, or equipment attached or adjacent to the student's body, including ambulatory restraints, which the student cannot easily remove and that restrict freedom of movement or normal access to the student's body. Mechanical restraint does not include the use of restraints for medical immobilization, adaptive support, or medical protection;

(5) "Physical holding restraint" means the use of body contact by school personnel with a student to restrict freedom of movement or normal access to the student's body; and

(6) "School personnel" means an individual employed on a full-time or part-time basis by a public school.

SECTION 4. (a) A student receiving special education services, as defined by § 49-10-102(4), may be restrained or isolated, only if such restraint or isolation is provided for in the student's individual education program, except that such student may be restrained or isolated in emergency situations, if necessary to assure the physical safety of the student or others nearby.

(b)(1) If school personnel impose restraints or isolation in an emergency situation, the school shall immediately contact appropriate school personnel who are designated under department rules to authorize the isolation or restraint. Such school personnel authorized by department rules shall see and evaluate the person's condition within a reasonable time after the intervention and the student's parent or guardian shall be notified, orally or by written or printed communication, the same day the isolation or restraint was used. School personnel shall be held harmless if reasonable effort has been made to comply with this subdivision (b)(1).

(2) If the student's individualized education program does not provide for the use of isolation or restraint for the behavior precipitating such action or if school personnel are required to use isolation or restraint over an extended period of time as determined by department rules, then an individual education program meeting shall be convened within ten (10) days following

the use of such isolation or restraint. If the behavior precipitating such action also warrants a change of placement, the child will have all rights provided under applicable state and federal law.

(3)(A) School personnel may report a suspected crime by calling a law enforcement official;

(B) School personnel may file a juvenile petition against a student receiving special education, only after conducting a manifestation determination that results in a determination that the behavior which resulted in the act requiring disciplinary action was not caused by the student's disability; or

(C) A school resource officer (SRO) may, upon witnessing an offense, take the student into custody. However, this option is available only if the SRO is a deputy sheriff or police officer fully compensated by a law enforcement agency and not a school official.

(c)(1) School personnel who must isolate or restrain a student receiving special education services, as defined by § 49-10-102(4), whether or not such isolation or restraint was in a emergency situation or provided for in the student's individual education program, shall report the incident to the school principal or the principal's designee who shall record the use of such isolation or restraint and the facts surrounding such use. A copy of such record shall be made available at individual education program meetings and upon the request of the student's parent or legal guardian.

(2) If the school principal, other school personnel designated under department rules to authorize the isolation or restraint, or any person having knowledge of the isolation or restraint have reason to believe that such isolation or restraint was unreasonable, unsafe or unwarranted, and such isolation or restraint caused injury to the student, the incident shall be reported pursuant to § 37-1-403.

(3) School personnel shall remain in the physical presence of any restrained student and shall continuously observe a student who is in isolation or being restrained to monitor the health and well-being of such student.

SECTION 5. (a) Administering a chemical restraint to a student receiving special education services, as defined by § 49-10-102(4), is prohibited, provided that nothing in this subsection shall prohibit the administration of a chemical restraint when administered for therapeutic purposes under the direction of a physician and with the child's parent or guardian's consent to administer such chemical restraint.

(b) Administering a noxious substance to a student receiving special education services, as defined by § 49-10-102(4), is prohibited.

(c) The use of any mechanical restraint on any student receiving special education services, as defined by § 49-10-102(4), is prohibited.

(d) Any form of life threatening restraint, including restraint that restricts the flow of air into a person's lungs, whether by chest compression or any other means, to a student receiving special education services, as defined by § 49-10-102(4), is prohibited.

(e)(1) The use of isolation or physical holding restraint as a means of coercion, punishment, convenience or retaliation on any student receiving special education services, as defined by § 49-10-102(4), is prohibited.

(2)(A) The use of physical holding restraint in the following circumstances is not prohibited:

(i) The brief holding by an adult in order to calm or comfort;

(ii) The minimum contact necessary to physically escort a student from one area to another;

(iii) Assisting a student in completing a task or response if the student does not resist, or resistance is minimal in intensity or duration; or

(iv) Holding a student for a brief time in order to prevent any impulsive behavior that threatens the student's immediate safety.

(B) The school is not required to notify the student's parent or guardian pursuant to Section 4 of this act in any of the circumstances listed in subdivision (e)(2)(A).

(f) The use of a locked door, or use of any physical structure that substantially accomplishes the intent of locking a student in a room or structure, to isolate or seclude a student, as defined in Section 3(3), is prohibited.

(g) Notwithstanding any provision of this section, actions undertaken by school personnel to break up a fight or to take a weapon from a student are not prohibited; however, these acts shall be reported.

SECTION 6. The State Board of Education, in consultation with the Department of Education, the Department of Mental Health and Developmental Disabilities, and the Department of Children's Services, shall promulgate rules and regulations concerning the use of isolation or restraint with students who

receive special education services so that isolation or restraint is not used when such procedures are unsafe, unreasonable or unwarranted. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 7. Nothing in this act shall be construed to limit the protection afforded publicly funded students under other state or federal laws.

SECTION 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 9. For purposes of promulgating necessary rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2009.

PASSED: May 13, 2008



RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 28th day of May 2008



PHIL BREDESEN, GOVERNOR